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Smith, Edward Parmelee.
statement in reply to
Professor Marsh's charges.

WASHINGTON, D. C.,
Wednesday, September 15,

Present: Hon. THOMAS C. FLETCHER, chairman; Hon. TIMOTHY
O. HOWE, Hon. B. W. HARRIS, Hon. CHARLES J. FAULKNER, and Pro-
fessor GEORGE W. ATHERTON.

The CHAIRMAN. (To the Commissioner of Indian Affairs.) Mr.
Commissioner, we invited you to meet with us this morning in order that
you might make such statements with reference to the charges contained
in the pamphlet of Professor Marsh as you may see proper to make,
we then propose to ask Dr. Bevier about such matters as Professor
Marsh wishes to inquire of him. We may desire to recall you for the
purpose of asking you some questions if we find that those we had
designed asking are not covered by the statement you will make to us
this morning.

Hon. E. P. Smith, Commissioner of Indian Affairs, then read the fol-
lowing statement in reply to Professor Marsh's charges:

STATEMENT OF HON. E. P. SMITH

Sometime about the 20th of April last, Professor Marsh came to my of-
fice bringing packages of coffee, sugar, tobacco, and flour, which he said
he had brought from Red Cloud agency. He explained that he was now
fulfilling a promise which he had made to Red Cloud. That while at the
Red Cloud agency, in October or November previous, he had found
difficulty in getting permission of the Indians to go past the agency, in
to their country in search of fossils; and as an inducement to Red
Cloud to procure this permission for him, he had offered to bring any
complaints which that chief should desire to make concerning his agent,
to the President; and that, in pursuance of this agreement between him
and Red Cloud, that Indian had made many grievous charges against
his agent and his administration of affairs. And had also given him
these packages of supplies as genuine samples of the food which his
agent was giving him. In answer to my inquiries, he said that he had
not in any way tested these samples by comparison with supplies which
were then being issued by the agent, and that he did not put great con-
fidence in Red Cloud's statement. Mr. Marsh also spoke of the confu-
sion which he witnessed at the agency, of the agent's want of courage
and coolness at the time of a threatened outbreak, and of his lack of
system in issuing annuity-goods, clearly indicating, as Mr. Marsh
thought, an incompetency on the part of the agent for his responsible
position, admitting at the same time that the position was one involv-
ing responsibility equal to that of the governorship of the State of Con-
necticut. On this point we agreed in our views.

He made no charges of fraudulent transactions on the part of Agent
Saville, except in the name of Red Cloud, saying that Red Cloud claimed
and repeatedly declared that his agent was cheating him.

The interview, so far as I was concerned, was a pleasant one, and,

Professor Marsh stated to me, had been brought about because some time previous, when giving him a letter of credit to Red Cloud and the officers of the Bureau in his country, I had requested him if he should observe anything deserving my attention that needed to be corrected, to make a note of it for my information.

The next morning an account of this interview between Professor Marsh and myself appeared in a New York paper, giving an incorrect and entirely unfair version; which was made the text of very severe and unjust criticism of the Interior Department, and especially of my own official action, using Professor Marsh's well-known name and position to give force and circulation to the statement. In all these attacks of the press great emphasis was laid upon the quality of supplies which, according to Red Cloud's samples, had been furnished the Indians. The Indian's samples and his story of having been wronged were rarely mentioned except in connection with the name and character of the distinguished professor, who had volunteered to take them to the President in person, and who, by so doing, became in the minds of all who read the accounts the endorser of both the samples and the story, neither of which were true. The newspaper version was so far from being true, and the criticism and charges founded upon it so unjust that I was sure Professor Marsh would be mortified by the false attitude in which he had been placed toward myself, and I confidently expected as a matter of courtesy and honor that he at once would correct them, especially in view of the fact that all the information given to the press on this subject had come exclusively from himself, and that he was known to be in intimate relation with the paper in which it appeared. Mr. Marsh did not make any such corrections. On the contrary, he allowed the continued misrepresentations, based upon an incorrect version of the matter, and especially based upon the samples he had brought, to receive a very wide circulation of the press without any denial from himself. When a man has wronged another unintentionally or otherwise, two courses are open to him: to make reparation, or to endeavor to justify his action. Professor Marsh has seen fit to adopt the latter course.

A few days after Professor Marsh was invited before the Board of Indian Commissioners, to whom he gave a much more extended account of his Red Cloud observations and inferences; upon which statement the board immediately took action by appointing a committee of their own number to investigate and report the facts.

This committee, not being ready to proceed at once to the investigation, the Secretary of the Interior requested the chairman of the Board of Indian Commissioners to name suitable persons to form a commission to take the whole matter into inquiry, and report. Much time was consumed in the composition of this commission, owing to the inability of persons invited to serve.

Among those who thus declined were Hon. H. A. Bullock, of Massachusetts; G. W. Lane, of the Board of Trade of New York; Senator Stevenson, of Kentucky; Senator Washburn, of Massachusetts; Professor Seely, of Amherst College.

While this commission was being procured Mr. Marsh was in Washington frequently, and was present at a council held with Red Cloud and his delegates for the special purpose of hearing the complaints he had to make respecting his supplies and his agent. The opportunity given that chief and his band to state their grievances was most ample.

The record of this council will show that Red Cloud's grievances, as presented in person, were not serious, and that no complaint was made by him against his agent until drawn out from him by the inquiry of Mr.

Marsh, whether he “was *perfectly* satisfied with his agent.” At one of the frequent interviews held with Mr. Marsh about this time, I called his attention to the injustice which he had done Agent Saville in consenting to be the bearer of Red Cloud’s complaints without having informed himself by personal inspection as to the character of the supplies at the agency whether the articles Red Cloud had given him were actually samples of the supplies delivered. Professor Marsh replied that I must recollect Red Cloud’s position; that he was the acknowledged head of that people, in a similar relation to the Sioux that President Grant holds to the people of the United States, and that it would have hardly been in accordance with Red Cloud’s notion of etiquette or propriety for him, the Professor, to seem in any way to question his word or fairness.

Relative to the allegations of inferior supplies furnished Red Cloud agency, I have only to say that the purchases were made on contracts entered into in pursuance of bids offered, and publicly read in New York on the second day of July, 1874. The sugar was furnished by E. C. Knight & Co., of Philadelphia; the coffee by B. G. Arnold & Co., of New York; the tobacco by Dohan, Carroll & Co., of New York; the flour by J. H. Martin, of Denver, Colorado. The award of these contracts to these parties was made in accordance with the advice of the board of Indian commissioners, who had before them all the bids, and upon the judgment of the inspector of the samples as to which offered the best value, and therefore constituted the best bids in each case for the Government to accept.

The inspector for flour was E. R. Livermore, of the Flour Exchange of New York City, who was recommended by the president of the exchange. His ability and integrity will not be questioned by flour-dealers in New York. The tobacco-contract was entered into after three inspections, resulting in the award being given to the parties to whom the second inspector, W. A. Robinson, had made it; the award of coffee was given on the inspection and recommendation of Thomas J. Barr; the sugar, on the inspection and recommendation of C. B. Kneval; the blankets were purchased on the inspection and judgment of C. B. Wilcox, all of New York City.

In making their award upon the bids and samples, these inspectors, I fully believe, were governed entirely by their own judgment in the case, and in each case their judgment was accepted and acted upon. When the contractors came to deliver the coffee, sugar, tobacco, and blankets, the question whether the articles were according to contract as to quantity and quality was left entirely to the decision of these inspectors. They inspected the goods and saw them shipped, and there can be no reasonable doubt that the articles actually purchased were delivered to the transportation companies in New York for shipment to this agency. These supplies are traced distinctly through Omaha and Cheyenne, and the agents receipt is returned for them. Samples of these supplies have been furnished the commission, with the statements of the several inspectors above named. These supplies are in my judgment fully equal in grade to those in use by the great majority of laboring people in this country, and are of a quality which ought to be satisfactory to the Indians. I believe the interests of true economy would not allow the purchase of a better grade of articles.

The sample of flour on which the contract was let, by the advice of Mr. Livermore, was sent to the flour inspector for Red cloud Agency, at Cheyenne, Maj. A. K. Long, of the U. S. Army. When the flour came to be delivered, I found from the complaints of the contractor that Maj.

Long's inspection was close and rigid. With this I was pleased, and so informed him by telegraph.

The blankets were purchased of John Dobson, of Philadelphia. They were the well-known standard Mackinaw blanket, of superior quality, heavy, warm, and serviceable; a much better blanket than the soldiers of the Army use, and a far better blanket, both for wear and bed-covering, than the great majority of the American people are able to have for themselves or their families. They were all stamped indelibly U. S. I. D., so that there is no room even for a suspicion that the blankets bearing this stamp, which Mr. Marsh saw upon the Indians', were not the identical heavy, soft, warm Mackinaw blankets purchased for them in Philadelphia. Red Cloud asked Professor Marsh to tell his Great Father that the blankets sent to him were not fit for horse-blankets; Professor Marsh delivered the message to the President, *and did not inform him that it was not true.* ~~that the blankets manufactured by Dobson were not the blankets delivered to the Indians.~~ Indian blankets were required to be marked, for the first time under that year's contract, and through the inexperience of the manufacturer in marking, a few of the blue blankets were injured by the stamping process; some of them to the extent of destroying the fabric, and thus making a hole in the blanket the size of the four letters. This is not true of any except the blue blankets, which were only one-eighth of the whole quantity furnished to that agency, and it is true only of a portion of this one-eighth. How great that portion is, I have not the information to state, but I do not believe it to have been large.

The above facts will show, I confidently believe, that the office took all reasonable and necessary means to protect the Government from imposition and fraud, and to secure the delivery of the proper articles for the use of the Indians.

At one of the interviews with Mr. Marsh he informed me that the Secretary of the Interior had requested him to make, for his use, a written statement of what he had seen and believed to be wrong at Red Cloud agency. I urged him to do so. He replied that he told the Secretary that if he desired such a statement, he should make the request to him in writing, which the Secretary had not done, and he would consider the matter whether he would furnish the statement or not. General Eaton, Commissioner of Education, was present at the interview and united with me in urging upon Professor Marsh to make such statement, in order that the Department might have the facts for a thorough investigation into all the complaints alleged. We were not able to obtain the consent of Professor Marsh to this request, yet he did not positively refuse it. I assured him over and over again that we were anxious to know what was the true state of things, and desired any information he could give us on the subject, and explained that it ought to be in writing, with reference to such sources of evidence as he could give us.

Mr. Marsh declined to furnish a written statement of frauds of which he had become aware, to myself. In answer to my request for such a statement, he replied he would give it to the commission appointed to investigate the matter. Pending the appointment of that commission, he sent the statement which I had requested to the President, publishing it at the same time in the newspapers. I am not aware of any reason assigned by him for such publication—a course unusual and in no way assisting either the President, Department, or the commission in searching for the alleged frauds.

Mr. Marsh assigns as his reasons for declining to give the statement to the Secretary of the Interior or to myself, that he had reason to

suspect the Department was interested in covering up rather than in discovering frauds, and that he had lost confidence in my integrity of purpose. To sustain this grave charge, which Mr. Marsh has taken the responsibility to scatter through the press and in his own publications copiously distributed through the mail, to all parts of this country, and even in Europe, no specific allegations are made. There are, however, three charges of fraud and wrong which he endeavors to fasten upon the Indian Office.

First, a disposition to shield contractors by false statements. For proof of this Mr. Marsh offers two dispatches, taken from the newspapers, as my statements. The first is as follows :

Commissioner Smith, of the Indian Bureau, says, in regard to the letter of General Bradley, published yesterday, that the cattle spoken of belong to the contractor; that they were sick, some of them with broken limbs, and that they were not issued to the Indians, ~~and that there was no intention of issuing them, simply because they were in such a poor and sickly condition.~~ It asserts that Red Dog's statement was incorrect, and that Red Cloud informed him this morning that Red Dog lied when he told the story to General Bradley and Professor Marsh. The Commissioner also states that General Bradley could have satisfied himself of this fact by a slight inquiry of the herdsmen or contractor, if he had desired to do so.

The second press dispatch on which I am convicted of falsehood and fraudulent intent is this :

It is stated at the Indian Bureau, with reference to the complaints concerning supplies furnished to the Indians at the Red Cloud agency, that all the flour sent there was inspected at Cheyenne, by Major Long, commissary of subsistence of the United States Army, and passed by him as equal to the accepted samples. It is therefore claimed that the samples of inferior flour brought here by Prof. Marsh, at the request of Red Cloud, were of some old issue, or, like the specimens of sugar and tobacco, have been damaged by exposure to the weather while in the Indians' possession.

In the first quotation from newspapers given above Mr. Marsh attempts to prove that I am false by Red Cloud's statement that he (Red Cloud) never said to me what is above alledged; and, secondly, by the statements of the half-breeds and squaw-men, that they did not interpret any such thing for Red Cloud, and therefore he could not have said it. If Mr. Marsh had made a slight inquiry respecting the dispatch, he could have saved himself the trouble of calling upon his Dakota witnesses. I never exchanged a word with Red Cloud on the subject. The reporter misunderstood me when he says that I told him that Red Cloud informed me. I said to the reporter that I had been informed that Red Cloud had so stated; and this fact entirely disposes of the "four falsehoods" and of the question of veracity raised by Professor Marsh between Red Cloud and myself.

Of the second dispatch, which Mr. Marsh thinks a sufficient ground to accuse me of fraud, I never had any knowledge whatever, until I saw it in his statement. The information purports to have been procured from the Indian Office on the 3d day of May. At that time I was not within two hundred miles of the Office, and had not been for a week previous, nor had I communicated with any one at the Office on the subject.

The second charge of Mr. Marsh implicating myself is that I had already been made acquainted with the wrongs at Red Cloud agency, and had taken no measures to prevent them. This I deny, and assert, on the contrary, that all previous reports of irregularities or wrongs said to exist at that agency, and all statements respecting the integrity of the administration of Red Cloud affairs, have received timely, full, and proper consideration by the Indian Office during my administration.

The first serious complaints made against agent Saville reached the

office in connection with the visit of Samuel Walker to the agency. The complaints were immediately made the subject of investigation by order of the Secretary of the Interior.

Bishop Hare, Rev. S. D. Hinman, inspector Bevier, and Hon. F. H. Smith, member of the Board of Indian Commissioners, were sent at once to inquire into the alleged wrongs. They made extended investigations. Bishop Hare and Mr. Hinman, as officers of the Episcopal church, had a peculiar interest in finding the truth. The report of this commission completely exonerated the agent from all complicity with frauds, and commended him for his satisfactory administration, in view of the many difficulties and embarrassments under which it was carried on.

On this report I acted, and gave the agent my confidence and hearty co-operation, notwithstanding the report of Samuel Walker, which Bishop Hare characterizes as contemptible. If I had been capable of doing otherwise I should have despised myself. J. D. Bevier, United States Indian Inspector visited this agency again the following September. His report of that inspection did not in any way reverse or recall the previous report which he had made respecting the findings of Samuel Walker. It related principally to subsequent transactions of the agent which he pronounced wrong and indicative of fraud. Inquiry showed, as I thought, that the inspector was mistaken in some quite important facts upon which he had based his statements, and agent Saville's explanation of his transactions which were the most seriously questioned, supported by testimony of other parties, seemed to me to be reasonable. I was also aware that just about this time and since his former report commending the agent, Mr. Bevier had had a personal grievance against agent Saville upon a matter not at all connected with his duties as inspector, and that it had led to quite unpleasant feelings towards the agent. This I supposed might account to some extent for the severe report which he now made. In frequent subsequent personal interviews on matters relating to his inspection tour, Mr. Bevier did not in any way of which I have any recollection, allude to the fact that he had changed his estimate of Saville. For these reasons the second report of the inspector while it gave me uneasiness and apprehension did not operate to destroy the confidence in the agent which his previous report and that of the other members of Bishop Hare's commission had inspired.

The third instance of fraud, or connivance with fraud, which Mr. Marsh charges is in connection with the transportation service rendered by D. J. McCann, under contract with the Indian Bureau. Mr. Marsh charges that by over-estimating the distance, the Government has been defrauded, with the knowledge of the Indian Office, to the amount of \$15,000. The facts are that the Government has not been, and can not be, defrauded one dollar on this transportation service; but by the care and caution of the Office, the Government is protected, and has been, from all fraud and loss, whatever may be the actual distance between Red Cloud and Cheyenne.

The facts relative to this matter are these: McCann and others bid for the transportation to the Red Cloud agency over a route which had been established at so much per pound per hundred miles. The distance had been already fixed in previous contracts, and it would naturally be supposed that bids of all parties would be based upon the distance recognized by the Department and by freighters at the time of the bidding. When the question arose as to the actual distance, and the transportation accounts were held up, pending the decision McCann addressed the following letter to the Secretary of the Interior:

WASHINGTON, D. C., *December 3, 1873.*

SIR: I have the honor to propose in the matter of difference as to the distance from Cheyenne to the Red Cloud Indian agency, that my accounts be allowed in accordance with the terms of the contract as to price and distance during the winter months, and that a sum sufficient to cover the cost of transportation for any distance less than that stipulated in the contract, which may be found to exist, may be withheld during the months of April, May, and June, 1874, till the question shall be determined.

The object in making this proposition is to secure the means for the prosecution of the work during the winter, while transportation is scarce and labor high. I respectfully inclose herewith a telegram received this day from the shipping-agent at Cheyenne, showing the demand for transportation and the need of funds.

Very respectfully your obedient servant,

D. J. McCANN.

To the honorable SECRETARY OF THE INTERIOR.

McCann's transportation service in May of 1874 amounted to \$6,323.66. His service in June amounted to \$8,905.31. Amount withheld for the two months, \$14,328.97. This sum was not paid to McCann until after he had entered into contract and given bonds in the sum of \$40,000, for its fulfillment, for transportation service in 1875.

There was no time in that year when the Government was not fully protected by this contract, and service rendered under it, against any loss that might be found to have occurred by over-estimated distance.

At the end of the year 1874-'75, the office was indebted to McCann on account of transportation for May and June, \$14,568.12. This was withheld until the 5th of August last, and until after McCann had entered into contracts involving \$100,000 expenditure, under bonds in the penal sum of \$51,000. Thus it will be seen that there has never been an hour from the time the question of distance was raised when the Government has not been able to compel McCann to make full and fair settlements on the actual distance between Cheyenne and Red Cloud agencies. At this time McCann is under contract to render service which will amount, at a low estimate, to \$95,000, a considerable portion of which service has already been rendered and is yet unpaid.

Office correspondence, which has been submitted to you, shows that the Indian Office took steps to procure a measurement of the distance, and that the route has been measured twice and the distance found to be 226 miles instead of 212 miles, the distance claimed by McCann. This result not being satisfactory to myself or to Agent Saville, I asked, under date of November 20, 1874, that the Secretary of War be requested to measure it by an officer of the Army. In accordance with this request an attempt to make the measurement was made by Second Lieutenant I. H. Winter, on the 31st day of December, 1874, which was unsuccessful on account of a severe storm. Subsequent to that time and during the spring and early summer months, it has not been practicable to measure the distance on account of the high water in the Platte, which prevented the passing of the river by the surveying expedition at the point where the transportation-route crosses. A request has recently been made of the War Department to complete this measurement at an early day. When it is done McCann's accounts will be adjusted on the basis agreed upon.

In conclusion of this portion of my statement, I desire to add that Professor Marsh is entirely wrong when he imputes to me any unworthy motives for the part which I have taken in relation to his complaints respecting Indian affairs. As I have stated, our first interview was to me in no way an unpleasant one, and I was not, at the time, aware that I had made any unfavorable impression upon himself. I did controvert his claim, as the representative of Red Cloud, that that Indian was being abused. His statements and complaints were so much after the old

stereotyped form, with which I had become familiar, and which every new man seems to learn by heart the first day out of Cheyenne, that I did not attach much value to them, and it is not unlikely that I showed the feelings which would be natural when I thought Professor Marsh had volunteered to be the bearer of complaints which were not well founded, and when I more than half suspected that the Indian had gotten the better of the Professor.

In a subsequent interview, after public attention had been widely called to his charges, Mr. Marsh told me that he came at that first interview simply to fulfill his part of a bargain with Red Cloud; that he was not a philanthropist nor a reformer; that that was not his line of business; that he was fully occupied in scientific pursuits, which left him no time or inclination to meddle with the Indian question, though he did not believe in the present Indian policy; but that having been crowded into this question he must go through. His reputation for good sense was at stake, and he would show that he was right.

The fact that Mr. Marsh, at no greater distance than New Haven, kept these dreadful tales of wrong and suffering, intrusted to him by the Sioux chief for safe conveyance to his Great Father, during all the biting cold of an unusually severe winter, from November to the last of April, without in any way endeavoring to call the attention of those who he must have supposed could right these wrongs, tends to show that he did not himself attach very much importance to disclosures made at Red Cloud, for it should be kept in mind in this connection that, according to his own statement, Professor Marsh, up to this interview in April, had entire confidence in myself as a true, determined friend of the Indians; and yet, during those six months, when the suffering from cold and hunger at the Red Cloud agency was greatly intensified, he did not so much as communicate with me by letter on this subject, nor in any way did he attend to Red Cloud's message until other business connected with his profession brought him to Washington in April, when, as he told me, he "*incidentally*" proceeded to fulfill his pledge to that Indian.

I am not aware of any expression, by word or otherwise, on my part, from which Professor Marsh was entitled to infer that I desired to prevent publicity or exposure of fraud in the Indian service. I did call his attention frequently, and, in what he may have regarded as severe language, to the fact that he was allowing the press, hostile to the Indian Bureau and to the Administration, to use his name in connection with statements, which were not true, and especially to parade the samples which he had taken from Red Cloud's hands as evidence of great fraud and corruption at that agency and in the Indian Office, when he had not at any time tested the fairness of those samples, though he had ample opportunity so to do while at the agency. I charged him with want of courteous and honorable treatment to me and the Department in allowing such public statements on his authority; without what I considered the slightest proof having been offered to me or any one else to sustain them, and when he himself did not claim to know from personal observation that the statements made in connection with his name, and his visit to Red Cloud and his bringing the samples to the Indian Office were true.

In making up their findings upon Professor Marsh's charges I ask the Commission to weigh well the suspicion and distrust which they have cast upon the Department of the Interior, the shock and horror which they have given to the minds of many of the best citizens of the country, and the destructive blow which they have struck at public confidence in the possibility of Indian civilization or

honest government. May I not also claim the personal right to ask your consideration of my own case, in relation to his statements. I have had but one desire or ambition as Commissioner of Indian Affairs, and that is to do something to lift 275,000 people out of a barbarous and semi-barbarous condition into Christian civilization and American citizenship. It was for this purpose alone, at a sacrifice of personal comfort and inclination, that I accepted and have consented to try to fill the very difficult, embarrassing, often discouraging, and always thankless office of Commissioner of Indian Affairs. I know that I despise wrong and meanness, and that in my estimation there is nothing meaner than to defraud an ignorant, helpless, barbarian; and that no inducement could be offered to make me desire to shield from exposure and punishment any man guilty of such a crime. Up to the present time I have enjoyed the reputation among a large circle of acquaintances of being an honest man; that reputation is all that I have which is of any value to me. Professor Marsh has, in fact, though probably without intention, done all that a man in his high position could do to destroy my name and take from me that which I prize above all earthly things, the good opinion of good men. He has done this by sweeping assertions, which have been made without any proper inquiry as to the facts, and which by free expenditure of money and use of the press have been scattered over the wide world.

I ask you to find the *facts* in this case, nothing more. If they condemn me, if they throw a shadow of suspicion upon me, by all means declare it, and give the declaration full emphasis. If on the other hand the author of these charges is mistaken and has made the venture of this assault without proper inquiry, then that fact requires to be so stated that the wide spread suspicion and distrust which have been created by the action of Professor Marsh, respecting the honest, hearty, effective, and hopeful effort for the elevation of the Indians, which the President and his officers and agents, with the cordial co-operation of the religious people of the country, are now making, may be remedied as far as possible.

Frequent reference has been made to the fact that the Secretary of the Interior in some cases overruled the action of the old Board of Indian commissioners where that Board had disapproved vouchers, and that such overruling was "illegal," "irregular," or "fraudulent."

Upon this point I invite your attention to the following provision of law defining the powers of the board and of the Secretary in regard to vouchers for Indian supplies, (Stat. at Large, vol. 16, p. 568:)

That hereafter no payments shall be made by any officer of the United States to contractors for goods or supplies of any sort furnished to the Indians, or for the transportation thereon, or for any buildings or machinery erected or placed on their reservations, under or by virtue of any contract entered into with the Interior Department, or any branch thereof, on the receipts or certificates of the Indian agents or superintendents for such supplies, goods, transportation, buildings, or machinery, beyond 50 per cent. of the amount due until the accounts and vouchers shall have been submitted to the executive committee of the board of commissioners appointed by the President of the United States, and organized under the provisions of the fourth section of the act of April tenth, eighteen hundred and sixty-nine, and the third section of the act approved April [July] fifteenth, eighteen hundred and seventy, for examination, revisal, and approval; and it shall be the duty of said board of commissioners, without unnecessary delay, to forward said accounts and vouchers so submitted to them to the Secretary of the Interior, with the reasons for their approval or disapproval of the same, in whole or in part, attached thereto; and said Secretary shall have power to sustain, set aside, or modify the action of said board, and cause payment to be made or withheld as he may determine.

Here is an express provision of law for such action by the Secretary in his discretion. It cannot therefore be illegal, irregular, or fraudulent.

Dr. Nathan Bishop, a member of the executive committee of that board which passed upon the Indian accounts, gives, in his testimony before the standing Committee of Indian Affairs, House of Representatives, of the 43d Congress, his views of this power and duty of the Secretary of the Interior over vouchers, after they had passed the inspection of the board, which is officially reported as follows :

By Mr. HARRIS :

Q. In all this matter do you treat or speak of anything as irregular which is not in violation of law ?

A. I don't think I should.

Q. Would you say that anything was irregular or improper which it was in the power of the Indian Department to do without your consent ?

A. I should not.

Q. Are you a lawyer ?

A. No, sir ; not practically. I once read law.

Q. In reference to what you have already said as to your regarding some proceedings as irregular, is it not a familiar fact that the Interior Department or the Secretary of the Interior, as a matter of law and practice, has the authority and the right to overrule the decision of your board ?

A. Certainly ; and if I had been permitted in the beginning to state what the Secretary of the Interior told me, it would have thrown a good deal of light on a good deal of the ground which you have gone over.

By Mr. McNULTA :

Q. What did the Secretary of the Interior say to you on this subject of examining and acting on the accounts ?

A. The Secretary of the Interior, at my request, understood, and I told him distinctly, that I should act in accordance with the law as I understood it, and that the discretionary power should be all left to him, as the law placed it in his hands. I told him that if an account was irregular, even though there was no indication of fraud, I should pronounce it irregular, and send it to him to act upon, in order that the exercise of the discretionary power might be by the party to whom that power was given by law ; and I may add here that the Secretary of the Interior requested me to state this if I had an opportunity—to state that I had exercised no discretion in dealing with the accounts, but had simply adhered to the law as I received it from good authority ; and I have never exercised discretionary power in any case, but have left it with the Secretary, where the law places it.

Q. You understand, then, that the Secretary has merely exercised that discretion which is placed in him by law in overruling your judgment in those matters ?

A. Yes, sir ; he had a right to do it, and take the responsibility.

Q. Do you know of any wrong act or purpose of his in doing so—anything outside of the legitimate exercise of that discretionary power ?

A. I do not, because I have never taken pains to inform myself.

Q. Then, as far as you know, the Secretary has just done what he had a right by law to do ?

A. I have never had reason to suppose that he has done anything that the law does not authorize him to do. Of course he takes the responsibility of his own acts.

It will be seen by this testimony that the board, fully recognizing the legal authority of the Secretary to overrule their decisions, adopted the policy to reject an account whenever it was *irregular*, even though there was no indication of fraud, leaving it to the Secretary to approve or disapprove, as he was fully empowered to do by law. The disapproval of an account by the board, therefore, does not, as Dr. Bishop says, indicate that it was fraudulent.

Many of the rejections of vouchers were based upon information in their possession of which the Department had no knowledge. For example, Samuel Walker's report was made December 6, 1873. The board were acting upon the statements in said report, while the Department had no knowledge of it, not being furnished with a copy of it until the 11th of February following. Subsequently, before the Committee on Indian Affairs of the 43d Congress Messrs. Bishop and Dodge of the board admitted that they had been deceived by Walker's report as to the number of Indians, and adopted the facts contained in Bishop

Hare's report upon the subject. You are respectfully referred to the testimony of Messrs. Bishop and Dodge upon this point in the report of the congressional committee, a copy of which has been furnished you.

The reasons assigned by this board for rejecting vouchers are frequently quite general. For instance, on page 12, report of 1873, they say, "affidavits in our possession go to show," &c., without furnishing the affidavits to the Department; "from investigation we are satisfied," &c., without giving any detail of the investigation; "the best information goes to show," &c., without stating what that information is. Page 13, they say "subsequent examination showed," &c., without stating what the examination had been. These expressions all referred to the investigation made by the board, the results of which were not communicated to the Department at the time the Secretary was called to act upon the vouchers to which the investigation referred.

Testimony has been taken relative to the substitution of corn for flour, and pork for bacon, at some of the Sioux agencies. This subject was thoroughly investigated by the standing Committee on Indian Affairs of the 43d Congress, and full statements will be found in their report above referred to. Corn was substituted for a portion of the flour upon the suggestion of Mr. Cree, then secretary of the Board of Indian Commissioners, in a letter written by him from the Indian country, where he was traveling in company with Mr. Brunot, the chairman of the commission. Mr. Cree stated that so great was the desire of the Indians for corn that they would exchange a sack of flour containing a hundred pounds for a peck of corn. I then thought, and still think, the substitution was a proper one, and have reason to believe that it has been useful and satisfactory to the Indians. The corn cost from 25 to 35 per cent. less per pound, and to the extent of the exchange was fully equal in value, pound for pound.

The substitution of pork for bacon was made on my own judgment, as a measure of economy. There is much less loss by shrinkage in pork than in bacon; it keeps cleaner and reaches the agencies in every respect in better condition for consumption than bacon. The pork costs less than the bacon and is worth more.

In considering the price paid for this corn it must be remembered that the transaction was a substitution and not a purchase. It is not improbable that by advertising, somewhat lower rates might have been obtained; but the flour contractor claimed that his existing contract should not be ignored, upon which at the time of the substitution there was a margin of profit to the contractor. To this margin of profit the contractor was in justice entitled. In making the substitution, therefore, the market price of flour was taken into consideration, and the exchange agreed upon allowed the same margin on corn that was then being realized on flour.

Still another class of claims rejected by the old board, and which the Secretary allowed, were those where beef had been received in excess of the one twenty-fourth part of the entire amount which the contract called for in any single semi-monthly delivery. When it was shown to the satisfaction of the Secretary that the beef had actually been delivered and consumed by the Indians, he waived the technical objection of the board and approved the vouchers. In all this class of claims there was no charge or evidence of fraud. In some instances this excess of the one twenty-fourth part was occasioned by the demand of the Indians which the agent had not the power to resist. In others it occurred from the agent receiving more cattle at a delivery than was required for immediate consumption in order to avail himself of the increase in weight


by feeding the cattle on prairie-grass. By this course, without addition of cost for herding, a large number of cows were saved from slaughter and given to the Indians for use. It was claimed by me that if the contractor was willing to make the advance delivery and it was for the benefit of the Indians and the Government, there could be no objection. Certainly there was no fraud.

I fully believe that a candid examination into this matter will show that a very large portion of the vouchers which were suspended, or which, for any reason, failed to receive the approval of the Board of Indian Commissioners, were of this class, and that the transactions involved in the outlay which they represented were entirely honorable and for the benefit of the Indians and the Government.



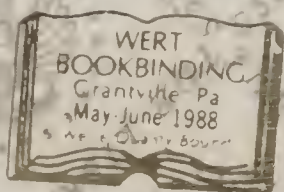
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